

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

JOHN KAJEWSKI

Facility ID #59747
Section 15, Fairfield Township
Palo Alto County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO-30

TO: John Kajewski
3530 550th Street
Cylinder, Iowa 50528

I. SUMMARY

This administrative consent order is entered into between John Kajewski and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding animal feeding operation violations at Mr. Kajewski's animal feeding operation located in Section 15, Fairfield Township, Palo Alto County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Cindy Martens, DNR Field Office #3
Iowa Department of Natural Resources
1900 Grand Avenue
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative

RECEIVED

MAY 27 2010

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN KAJEWSKI

Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. John Kajewski owns and operates a confined animal feeding operation located in Section 15, Fairfield Township, Palo Alto County, Iowa. The facility consists of 1,200 animal units including wean to finish hogs. Mr. Kajewski submitted an original Manure Management Plan (MMP) for this facility in December 2001. His annual MMP update was established to be December 1 of each year.
2. On April 12, 2005, DNR Field Office 3 issued a Notice of Violation letter to Mr. Kajewski as a result of an MMP inspection. During the inspection it was determined that there were no acres listed in the manure application records.
3. On January 1, 2006, DNR Field Office 3 issued a Notice of Violation letter to Mr. Kajewski for failing to submit the 2005 MMP update by December 1, 2005. On February 13, 2006, DNR Field Office 3 sent Mr. Kajewski a Notice of Referral indicating the violation was being referred for further enforcement. On September 25, 2006, DNR and Mr. Kajewski entered into Administrative Consent Order No. 2006-AFO-18. The administrative consent order addressed Mr. Kajewski's failure to timely submit the 2005 MMP update. The administrative consent order assessed an administrative penalty of \$1,500.00. The MMP update was submitted on March 1, 2006.
4. On December 4, 2006, DNR Field Office 3 sent Mr. Kajewski a letter stating his 2006 MMP update was incomplete. The MMP update was missing the county verification and the erosion calculation records. On January 4, 2007, DNR Field Office 3 issued a Notice of Violation letter to Mr. Kajewski for the incomplete MMP update. The information was submitted on February 7, 2007.
5. On December 31, 2007, DNR Field Office 3 issued a Notice of Violation letter to Mr. Kajewski as a result of an MMP inspection. During the inspection it was determined that the manure application on the fields was not included in the MMP.
6. On December 11, 2008, DNR Field Office 3 issued a Notice of Violation letter to Mr. Kajewski for failing to submit the 2008 MMP update by December 1, 2008. On January 27, 2009, DNR Field Office 3 sent Mr. Kajewski a Notice of Referral indicating the violation was being referred for further enforcement. The referral was later withdrawn because Mr. Kajewski submitted the 2008 MMP update on February 3, 2009.
7. On May 6, 2009, DNR Field Office 3 sent Mr. Kajewski a letter reminding him of the requirements to submit a MMP update by December 1, 2009. On December 14, 2009, DNR Field Office 3 issued a Notice of Violation letter to Mr. Kajewski for failing to submit the 2009 MMP update by December 1, 2009. On

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN KAJEWSKI

January 5, 2010, DNR Field Office 3 sent Mr. Kajewski a Notice of Referral indicating the violation was being referred for further enforcement. On January 12, 2010, Mr. Kajewski submitted the 2009 MMP update and fees.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.16(3) requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The compliance fee is fifteen cents per animal unit. Mr. Kajewski's MMP update and compliance fee for 2009 was due December 1, 2009. Mr. Kajewski failed to submit a timely MMP update with compliance fees for 2009. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Kajewski agrees to do the following:

1. Pay a penalty of \$2,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Kajewski's failure to comply with the animal feeding operation regulations has allowed him to achieve an economic benefit. He has an economic benefit by delaying the submittal of the MMP update. The economic benefit received by Mr. Kajewski is estimated to be at least \$50.00 and that amount is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN KAJEWSKI

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Mr. Kajewski's failure to timely submit the MMP update threatens the integrity of the animal feeding operation program. The MMP update is a crucial aspect of the DNR's animal feeding operation program. The update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. Mr. Kajewski's operation has approximately 1,200 animal units and if the manure is not contained or applied properly it could cause environmental harm. Additionally, Mr. Kajewski has been issued a previous administrative consent order for failing to timely submit a MMP update. Based on the above considerations, \$950.00 is assessed for this factor.

Culpability - All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. The animal feeding operations area of agriculture is a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. Mr. Kajewski is well aware of the requirements as well as the deadline for the submittal. On at least three occasions in the past four years Mr. Kajewski has either submitted a late MMP update or an incomplete MMP update. Mr. Kajewski has been issued a previous administrative consent order for failing to timely submit a MMP update. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Kajewski. For that reason Mr. Kajewski waives the right to appeal this administrative consent order or any part thereof.

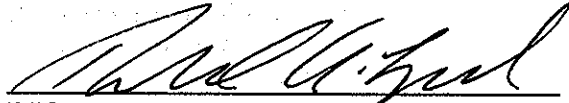
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN KAJEWSKI


JOHN KAJEWSKI

Dated this 24 day of
May, 2010.


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 3 day of
June, 2010.

#59747; Field Office 3; Kelli Book; Gene Tinker; EPA; VIII C.1